

Term No. 1862

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October Term, 1916

IN THE
Supreme Court of the United States

LINCOLN GAS & ELECTRIC LIGHT COMPANY,
APPELLANT.

VS.

THE CITY OF LINCOLN, NEBRASKA ET AL.,
APPELLEES.

MOTION TO ADVANCE CAUSE.

C. PETERSON PETERSON,

W. M. MORRIS,

Attorneys for Appellees

E. C. STROBE,

CHAS. A. FREBAUFF,

Attorneys for Appellant

General No. 25574.

Term No. 744.

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C. PETRUS PETERSON,
W. M. MORNING,
Attorneys for Appellees.

E. C. STRODE,
CHAS. A. FRUEAUFF,
Attorneys for Appellant.

Now come the appellees in the above entitled cause and move the court to advance said cause for the reasons set forth in the following:

BRIEF STATEMENT OF THE MATTER INVOLVED.

On November 19, 1906, the City Council of the City of Lincoln passed an ordinance reducing the net price to be charged for gas sold in said City from \$1.20 to \$1.00, and allowing a ten per cent penalty to be added for non-payment within six days after the rendition of bill, and a minimum charge of twenty-five cents for each service. Said ordinance was to take effect December 1, 1906. On December 27, 1906, the appellant Lincoln Gas & Electric Light Company, a corporation engaged in selling artificial gas in said City, filed its bill in the Circuit Court of the United States for the District of Nebraska, attacking said ordinance on the ground that the rate established was confiscatory and deprived the complainant of the equal protection of the law, and deprived it of its property without due process of law, and was in violation of the Fourteenth Amendment of the Constitution of the United States, and prayed an injunction restraining the City of Lincoln and the Mayor and City Attorney from enforcing or attempting to enforce said ordinance. A temporary restraining order was allowed. On April 6, 1909, a decree was entered in said cause finding no equity in complainant's bill, so far as it related to said gas rate ordinance, and said bill was dismissed and the restraining order was dissolved. On May 5, 1909, on application of complainant, the court allowed an appeal to this court, restoring the restraining order upon the complainant filing a bond with the clerk of the court in the sum of \$150,000.00, for the benefit of gas consumers, conditioned that in the event the decree of the court theretofore entered should be affirmed by this court, the complainant would, on demand, pay to the parties entitled thereto, all overcharges for gas which it may have exacted in violation of said ordinance, since the date when it would have gone into effect but for said restraining order. Said bond was given and the appeal to this court was thereafter perfected.

On December 6 and 7, 1911, said cause was argued and submitted to this court on its merits, and on February 19, 1912, this court decided it on its merits, the opinion of this court being reported in 223 U. S. at page 349.

This court reversed the decree of the court below in said cause, and remanded said cause for further proceedings ordering that the same be referred to a skilled master to hear such additional evidence as the respective parties might wish to take, and to report fully his findings upon all the questions raised by either party and that upon such report the court should proceed as equity may require. It was further ordered by this court that the injunction granted in the court below continue in force until final decree upon condition that complainant enter into a new bond with satisfactory sureties to account for all overcharges in the event the ordinance shall be sustained. The required bond was thereafter given and the restraining order has been continued and is still in force.

The court below, in harmony with the mandate of this court, referred said cause to a skilled master, who took such additional evidence as was offered by the respective parties, and made his report to the district court. Exceptions to said report were filed by complainant and these were overruled by the court below and the report of said special master was in all things affirmed and approved, and a decree entered finding that there was no equity in complainant's bill so far as it related to said gas rate ordinance and dismissing said bill. Upon application of complainant an appeal to this court was allowed and the restraining order restored upon the giving of a new bond by complainant in the sum of \$575,000.00, conditioned for the repayment to gas consumers of all overcharges in case said ordinance shall be finally upheld. Said bond was given and the record on appeal has been filed in this court, and is now being printed.

This cause having been once adjudicated by this court upon the merits, and having been again brought up by appeal, the appellees move the court that the same be advanced under section 4 of rule 26 of this court.

Respectfully submitted,

C. PETRUS PETERSON,

W. M. MORNING,

Attorneys for Appellees.